

EXHIBIT 56

I N D E X

XAVIER WALKER
CASE NO. 00-CR-20601-01
DATE: 1/11/05
PAGES: EEE-1 through EEE-20
REPORTER: Christine E. Weber

SENTENCING HEARING

--oOo--

1 THE COURT: Bring out Walker and Long,
2 please.

3 (Pause.)

4 THE COURT: Good morning, sir.

5 DEFENDANT WALKER: Good morning.

6 (Pause.)

7 THE COURT: Okay. If you're all ready to
8 proceed, let's do so.

9 We are -- in aggravation?

10 MS. RAVIN: Correct, Judge. We have I
11 believe rest --

12 THE COURT: Before we proceed any further,
13 counsel, please identify yourselves.

14 MR. CONNIFF: Judge, John Conniff,
15 C O N N I F F, for Jovanie Long.

16 MR. WILSON: Gregory Wilson on behalf of
17 Xavier Walker.

18 MS. RAVIN: Jennifer Ravin for the People.

19 THE COURT: Thank you.

20 Now, what were you saying?

21 MS. RAVIN: Judge, we had presented in
22 aggravation the pending cases of the defendants. We
23 had not -- and then we had presented the victim
24 impact statement, and that was what we had presented

1 in terms of aggravation. We did not present any
2 certified copies of conviction or anything. I was
3 waiting for argument, but I can present those.

4 I did not present their criminal
5 history.

6 THE COURT: All right. Mitigation, please.
7 You can tender argument.

8 MR. CONNIFF: Judge, on behalf of Jovanie
9 Long, we would rely on the presentence
10 investigation.

11 I would bring to the Court's attention
12 that the defendant was raised by his uncle, who is
13 present in court, Thomas Clandor (phonetic). He is
14 in the rear of the courtroom.

15 We would ask your Honor to consider
16 the contents of the presentence investigation and
17 impose a reasonable sentence upon Mr. Long.

18 MR. WILSON: Similarly, Judge, on behalf of
19 Xavier Walker, we, too, would like the Court to take
20 cognizance of the presentence investigation report
21 that had been rendered and take note of the fact
22 that Mr. Walker is 25 years old, has no criminal
23 history regarding any violent crimes. The -- in
24 fact, he only has a history of two drug -- two small

1 drug cases as an adult, Judge.

2 Again, he's 25 years old. He's born
3 and raised and lived all of his life with his
4 family. We'd ask you to take cognizance of the
5 presentence investigation report.

6 THE COURT: Arguments?

7 MS. RAVIN: Judge, in terms of Xavier
8 Walker, he has the cases that we've presented in
9 aggravation that were pending. His two prior
10 convictions are a 1998 possession of a controlled
11 substance with intent, which is a Class 2, and a
12 possession of a controlled substance, which is a
13 Class 4. He received IPS probation on both in July
14 of 1998.

15 He then violated that probation and
16 was resentenced to boot camp. He was then violated
17 on that and he received three years IDOC in
18 September of 1999.

19 When he went to Illinois Department of
20 Corrections, he was given work release. He then
21 escaped from that work release. He has continually
22 shown and thumbed his nose at the authority. Hence,
23 the possession of contraband in a penal institution
24 was also presented in aggravation.

1 Furthermore, the statements that were
2 made in the presentence investigation are clearly
3 self-serving. He makes a comment about that he had
4 used marijuana with his friend approximately every
5 other day and that he had last used marijuana before
6 he was arrested on this case. He also states that
7 he was under the influence of marijuana at the time
8 of his arrest.

9 He clearly states in the videotaped
10 statement that he wasn't under the influence and
11 that he was sober and adequate to give the
12 statement. You viewed that videotaped statement,
13 and he clearly was not high or under the influence
14 at that time.

15 In terms of -- do you want me to do
16 both, Judge?

17 THE COURT: Yes.

18 MS. RAVIN: In terms of Mr. Jovanie Long,
19 he has a 2000 possession of a controlled substance
20 where he received one year IDOC. He has a Class 2
21 possession of a controlled substance with intent in
22 1998 where he got 18 months felony probation.

23 He says in his presentence
24 investigation that he left school because he lost

1 interest. Judge, he lost interest; so he decided
2 not to make something of his life and instead he
3 decided to take up with his co-defendant in this
4 case and sell phony drugs and hit people up and
5 murder them for money, which is exactly what
6 happened in this case.

7 They told you in their videotaped
8 statements that they were going to pretend to sell
9 the drugs and then they were going to rob them.
10 Unfortunately, Marek Magik (phonetic), when he was
11 driving, got lost, ended up in this area and, while
12 he thought he would be asking for directions,
13 clearly was not given correct directions. He was
14 told to drive around the corner, at which point
15 Jovanie Long enters the car and a fight ensues, and
16 he takes that gun and he shoots the victim, Marek
17 Magik.

18 After that, he then chases down the
19 victim, who clearly did not want to give up his life
20 or his money that he had worked so hard for. It was
21 his first paycheck that he was out celebrating when
22 he had that cash in his shirt pocket.

23 The defendant then chases after
24 Mr. Magik and shoots him from behind, killing him

1 and leaving him there to die. The two defendants
2 take off and are eventually caught.

3 Based on their backgrounds, based on
4 the egregious circumstances in the case, and based
5 on the fact that Jovanie Long was convicted of
6 personally discharging the weapon --

7 THE COURT: No.

8 Go on.

9 MS. RAVIN: -- we believe that your Honor
10 will institute a fair and appropriate sentence and
11 that he should be given the extra, as mandated by
12 the statute, of the additional 25 to life on top of
13 the normal range of 20 to 60.

14 We were originally seeking the death
15 penalty which, since he was not found guilty of a
16 triggering offense, he is not eligible for.

17 THE COURT: John?

18 MR. CONNIFF: Judge, based upon the
19 defendant's age and the information contained in the
20 presentence investigation, as well as his lack of
21 any history of crimes of violence, we would ask your
22 Honor to impose a reasonable sentence within the
23 range mandated by the statute.

24 THE COURT: Greg?

1 MR. WILSON: Judge, I'd Just like to point
2 out that, contrary to counsel's statement, the
3 presentence investigation does not contain anything
4 suggesting that my client was in violation of the
5 work release for the simple fact, Judge, that that
6 simply is not true.

7 In fact, as we stand here right now,
8 he's currently in Stateville for that offense, and
9 he has been informed by them, Judge, that their
10 records are in error, that there is no such
11 violation.

12 We ask that given his age, Judge, and
13 given his background, an appropriate sentence be
14 imposed.

15 THE COURT: Well, Mr. Long, anything you'd
16 care to say?

17 DEFENDANT LONG: No, sir.

18 THE COURT: Mr. Walker?

19 DEFENDANT WALKER: No, sir.

20 THE COURT: Mr. Long, the evidence quite
21 clearly established that you did in fact discharge a
22 handgun which resulted in the shooting death of the
23 victim.

24 The law requires a minimum sentence of

1 really what is 45 years in the Illinois Department
2 of Corrections as a minimum. That is all of your
3 productive life and then some. Sir, you are
4 sentenced to 45 years in the Illinois Department of
5 Corrections.

6 Mr. Walker, anything you want to say,
7 sir?

8 DEFENDANT WALKER: No, sir.

9 THE COURT: How old are you now,
10 Mr. Walker?

11 DEFENDANT WALKER: Twenty-five, sir.

12 THE COURT: Twenty-five.

13 I have reviewed the presentence
14 investigation of not only Mr. Long but Mr. Walker as
15 well, and I agree with counsel for Mr. Walker.
16 Unless I'm overlooking it, I don't see any --

17 MS. RAVIN: Judge, it's part of the same
18 attachment in the pre-sentence investigation. It
19 shows that he has a warrant from IDOC. It was
20 issued, I believe -- if you look on the bottom of
21 one of the pages, it says warrant and then the next
22 page it shows that he was -- show that to counsel.

23 (Pause.)

24 THE COURT: Okay. I will not consider that

1 circumstance in the sentencing.

2 Sir, it is with an eye toward
3 rehabilitation that you be sentenced to the Illinois
4 Department of Corrections for a period of 35 years.

5 Mr. Walker and Mr. Long, you have 30
6 days from today's date to appeal the sentence, and
7 to do that, you must set forth in writing the
8 reasons for your post-trial motions. Issues not
9 reduced to writing cannot be argued later on.

10 If you need a copy of these
11 proceedings to assist you in the preparation of
12 post-trial motions and you cannot afford that, let
13 me know and I'll give you one free of cost. If you
14 need counsel to assist you in post-trial motions but
15 cannot afford one, let me know that, and I'll
16 appoint an attorney to represent you.

17 Any questions, Mr. Long?

18 DEFENDANT LONG: How long will that take?

19 THE COURT: Your appeal?

20 DEFENDANT LONG: Yes.

21 THE COURT: I can't say exactly, sir.

22 DEFENDANT LONG: I don't think I can afford
23 no -- well, I know I'm not going to be able to
24 afford no lawyer; so whatever.

1 THE COURT: All right. I would imagine
2 that counsel will file a motion to reconsider, and
3 pending the outcome of that, if it's denied, I'm
4 sure that Mr. Conniff will file a motion that the
5 State Appellate Division be appointed to represent
6 you.

7 MR. WILSON: Judge, on behalf of
8 Mr. Walker, I'm asking that he be given credit for
9 the 1,688 days that he has been in custody.

10 THE COURT: It's noted.

11 MR. CONNIFF: Judge, as to Mr. Long, 1,620
12 days.

13 THE COURT: I'm sorry. I've got them -- do
14 you have any statements from the victims?

15 MS. RAVIN: Unfortunately, there was a
16 disastrous accident last night and she was not able
17 to come in today. She did, however, want the
18 sentencing to proceed.

19 THE COURT: Yes, ma'am. Something you want
20 to say?

21 MRS. WALKER: Your Honor --

22 MR. WILSON: This is Mrs. Walker, Judge.

23 THE COURT: Yes, Miss Walker.

24 MRS. WALKER: Your Honor, I'm very upset.

1 I know my son is innocent. They --
2 and I -- and with no due respect to you, sir. With
3 no due respect to you. I know you base it on the
4 things that was presented to you, but I feel that my
5 son wasn't -- it was -- I don't feel the case is
6 presented in the way that would prove his innocence.

7 A lot of times it's -- when we had --
8 he had witnesses that the State is aware about
9 during the time that they said was in question, and
10 I know my son was not represented properly.

11 DEFENDANT WALKER: Your Honor, I would like
12 to get all the transcripts and everything from the
13 police station up until now of my case.

14 DEFENDANT LONG: Me, too, sir.

15 DEFENDANT WALKER: Without anything added
16 to the list.

17 MRS. WALKER: And, also, sir, no due
18 respect to you, regarding that videotape, he had
19 a -- there was an attorney -- there was an attorney
20 from first events that had came and talked with him,
21 and when this attorney was called on -- when the
22 attorney -- when this attorney had went in and seen
23 and talked with him, this attorney --

24 THE COURT: I'm listening.

1 MRS. WALKER: Oh.

2 When this attorney was called on, the
3 way it was presented, it was a -- I think it was an
4 unfairness because my son wasn't able to -- it
5 was -- they was saying that he -- he wasn't
6 comprehending during the time that he was in
7 questioning.

8 THE COURT: Your son didn't understand what
9 was happening?

10 MRS. WALKER: During the time that they --
11 he wasn't allowed to call home. They had questioned
12 him and interrogated him, had him -- it was just to
13 me where he was incoherent and went along with what
14 was being suggested, and to me it was just an
15 unfairness.

16 THE COURT: Miss Walker, your son's case
17 now is going to have to work its way through the
18 appeal process; and this information that you're
19 sharing now you might want to pass on to the
20 appellate lawyer. I cannot now retry the case.

21 DEFENDANT WALKER: Judge, there was one
22 thing. In this case, there was some pictures that a
23 person from the Public Defender's Office had done
24 took of footprints and bruises on my back and

1 handcuff marks on my wrists and when they took me to
2 the police station and what they did to me at the
3 police station, and them pictures was never found.
4 Them pictures never came up, and they didn't get
5 admitted.

6 My mother and father are trying to
7 find these pictures. They called the police
8 station, they called every place, and they can never
9 find the pictures.

10 THE COURT: Mr. Walker, it is not my role
11 to act as an active advocate for one side or other.
12 What I hear you asking is that I launch some sort of
13 investigation to determine the whereabouts or the
14 disposition of these photographs. I think it would
15 be inappropriate for me to do that.

16 If one of the State's witnesses were
17 to say, Judge, we have some proof concerning the
18 guilt of Mr. Walker and would you look into it, I
19 think you would be upset if I said, yes, I'll look
20 into it. And just the same is true for you. I
21 cannot actively go out and search for this bit of
22 evidence or anything else.

23 You know, it's -- I don't expect you
24 to appreciate what I'm saying, but it is true to the

1 best of my knowledge.

2 Yes, ma'am.

3 MRS. WALKER: Will I be able to have a
4 contact visit with my son and touch my son?

5 THE COURT: Is there anything else?

6 MR. CONNIFF: No, Judge.

7 The only other thing is Mr. Long had
8 asked for a three-week stay of mitt, and if he also
9 could be allowed to speak to his uncle before --

10 MR. WILSON: We would be asking for a
11 30-day stay of mitt, Judge.

12 THE COURT: I'm sorry. State?

13 MS. RAVIN: I would -- I was going to ask
14 if we needed to clarify on the counts with respect
15 to Jovanie Long.

16 THE COURT: As to Mr. Long, the findings
17 are on Counts I, II, IV and V.

18 As to Mr. Walker, it's Counts I and
19 II.

20 MS. RAVIN: Okay.

21 THE COURT: All right. I can tell you
22 right now that Mr. Walker will probably go back
23 today.

24 DEFENDANT WALKER: Your Honor --

1 THE COURT: Because he's in custody
2 already, IDOC custody, but we'll try.

3 Stay of mitt to February 1st.

4 DEFENDANT WALKER: Well, if I'm mandated
5 back today, I got a copy of the paperwork that they
6 gave me down there that they found out that it's
7 over with in two weeks.

8 THE COURT: All right. Well, I'll sign
9 that.

10 DEFENDANT WALKER: I'll be mandated back.

11 THE COURT: Okay. You got it.

12 Mr. Correctional Officer, on your way
13 to the jury room, would you let him hug his mother?

14 CORRECTIONAL OFFICER: Okay.

15 THE COURT: All right.

16 And, uncle, come to the middle of the
17 floor. Leave your clothing there.

18 All right. You can go on back,
19 Mr. Walker.

20 MS. RAVIN: Judge, we do have other matters
21 in aggravation.

22 THE COURT: Oh, hold on. Hold on.

23 What sheet?

24 MS. RAVIN: I don't know the sheets. I can

1 just --

2 THE COURT: I can find it for you.

3 MS. RAVIN: I have James Littleton. Just
4 for the record, James Littleton, 04-CR-5045, will be
5 nolle'd as they were used in aggravation.

6 THE COURT: I'm sorry. Which one is that?

7 MS. RAVIN: 04-CR-5045, James Littleton.
8 He's on here June 4, 2004, from arraignment,
9 arraignment of Xavier Walker.

10 THE COURT: Give me the case number.

11 MS. RAVIN: 04-CR-5045.

12 THE COURT: Five oh four five.

13 And the name, ma'am, was Littleton?

14 MS. RAVIN: James Littleton.

15 THE COURT: All right. That's nolle'd.

16 MS. RAVIN: Thank you, Judge.

17 THE COURT: What's the other one?

18 MS. RAVIN: Xavier Walker also has
19 04-CR-25239 and 04-CR-10622. Those would also both
20 be nolle pros'd as they were used in aggravation.

21 And then I have --

22 THE COURT: Hold on. I'm still trying to
23 find it.

24 MS. RAVIN: 10622 and 25239?

1 THE COURT: I've got 10622.

2 MS. RAVIN: Okay.

3 THE COURT: Then there is one more on --
4 Mr. Long's?

5 MS. RAVIN: Yes. 01-CR-21057, that would
6 also be a nolle.

7 THE COURT: Thank you.

8 Defendant demands trial on those
9 matters?

10 MR. CONNIFF: Yes, Judge.

11 MS. RAVIN: Thank you, Judge.

12 THE COURT: All right.

13

14 WHICH WERE ALL THE PROCEEDINGS HAD
15 AT THE HEARING OF THE ABOVE-ENTITLED
16 CAUSE ON JANUARY 11, 2005.

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